IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8050 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESH RAJARAM MADRASI

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR AJ DESAI ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/01/2000

ORAL JUDGEMENT

#. Heard learned advocate Ms.Banna Datta for learned advocate Ms.K.U.Mishra, on behalf of the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 18-5-99 passed by respondent No. 2 - The Commissioner of Police, Ahmedabad against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicate that in all 7 criminal cases were registered against the petitioner at Kagdapith, Maninagar and Naranpura police stations against the petitioner for different offence under IPC in between 1-1-1999 to 14-4-1999. That two witnesses on assurance of their anonymity have given information about the petitioner vide their statement on 17-5-99 which related to the incidents alleged to have occurred on 20-3-99 and 28-3-99.

#. That on the basis of the above stated material, respondent No.2 - The Commissioner of Police, Ahmedabad as the detaining authority has come to the conclusion that the petitioner is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that as per the grounds of detention, the petitioner was released on bail in respect to C.R. No : 172 of 1999 registered at Kagadapith Police Station and C.R. No : 142 99 registered at Maninagar Police Station, while, as per the documents supplied to the petitioner, the petitioner is released on bail in respect to C.R.No : 60/99 registered at Kagdapith Police Station by the competent court on 23-2-99. The petitioner was also released on bail in respect to Criminal Case registered vide C.R. No : 137 / 99 at Kagadapith Police Station on 23-2-1999. That the grounds of detention further indicate that though the petitioner was in judicial custody, he was likely to be released on bail by Court and thereafter, is likely to repeat anti social activities and as such the detention order is necessary. That the said observation of the detaining authority suggests that there is non application of mind and non consideration of claiming of cancellation of bail under Section 437(5) of CrPC though

available under Section 437(5) of CrPC.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. In the instant case, on scrutiny of papers, it clearly appears that the detaining authority has failed to consider the aspect as the detenu was in judicial custody why he could not be prevented by claiming cancellation of bail granted in cases registered against him and pending for trial. In view of the same, the detention order could hardly be sustained.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised by the petitioner.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 18-5-99 passed by respondent No. 2 - The Commissioner of Police, Ahmedabad against the petitioner is hereby quashed and set aside. The petitioner - RAKESH RAJARAM MADRASI is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 31-1-2000 [A.K.Trivedi, J.]

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